

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

**From:** Lawrence T. Woodlock, Senior Commission Counsel  
Luisa Menchaca, General Counsel  
Carla Wardlow, Chief, Technical Assistance Division

**Subject:** Second Prenotice Discussion of Proposed Regulations on Reporting Mixed State and Federal Expenditures by Political Party Committees (18530.3), and on Required Committee Bank Accounts (18534).

**Date:** August 21, 2006

---

**Executive Summary**

Last year, staff proposed regulation 18530.3 to codify rules for reporting certain campaign receipts and expenditures by state political party committees. Representatives of two party committees persuaded the Commission that the draft regulation might be preempted by federal law, and at the December meeting the Commission approved a request for an advisory opinion from the Federal Election Commission (“FEC”) on the preemption question. The FEC declined to issue an advisory opinion on a regulation not yet adopted, and staff now returns for a second prenotice discussion of this regulation with an eye toward adoption later this year. The preemption claim, if reasserted, can be decided by the FEC after adoption. The proposed regulation answers questions on the interaction between the state and federal laws governing these committees. The parties have consistently urged the Commission to forego a regulation, and simply advise them to continue reporting on Schedule D of the Form 460 their expenditures of federal funds on state or local election campaigns – an option that would provide full disclosure of the amounts spent, but not the identities of the individual contributors. Staff doubts that the Act would sanction such a departure from established law. But Mr. Bell has presented an alternative draft regulation, which we present for discussion along with the staff proposal.

Also in December, the Commission considered proposed regulation 18534, which grows out of section 85303, and imposes contribution limits on all committees when the contribution is made or received “for the purpose of making contributions to candidates for elective state office.” This statute does not limit contributions to committees when they are made for any other purpose. To monitor compliance with this special-purpose limit, staff proposed that contributions in excess of the limit be segregated in a separate bank account from funds legitimately available for any and all purposes. There was general agreement with this concept, but public discussion pointed to defects in detail, and the Commission asked staff to implement suggested cures and return for a second prenotice discussion. The present regulation has been revised accordingly.

## 1. Regulation 18530.3 – Background

California political party committees are defined by the Act<sup>1</sup> at section 85205:

“‘Political party committee’ means the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code.”

These committees typically maintain from two to four bank accounts, which may be registered as committees in their own right under state or federal law, depending on their sphere of activity. Thus a county central committee may receive and direct contributions into a “federal account,” subject to the source and amount limitations and the reporting requirements of the Federal Election Campaign Act (“FECA”), which regulates funds used in federal political activities. The same committee may also receive and direct contributions into a “non-federal account,” subject to the limits and reporting requirements of the Act, which regulate funds used for state and local activities. Further, federal law permits political party committees to establish and maintain “Levin fund” and “allocation” accounts, to collect and disburse funds used for a mix of federal and state or local campaign activities.

The rules governing activities by California political party committees are well established insofar as they concern only state or local activities. But when these committees engage in activities regulated in part by our own Act, and in part by the FECA, the interplay between these two bodies of law is not always clearly outlined in federal or state law. In late 2004 Commission staff issued the *Boling* Advice Letter to address one such problem, and at the same time staff began fielding questions on state law treatment of “Levin funds,” a then-new classification created by Congress in the Bipartisan Campaign Reform Act (“BCRA”). Under BCRA, Levin funds may be used by political party committees in certain federal *and* state or local activities, subject to state law. Congress gave detailed explanations for the use of such funds in federal activities, but left it to the states to integrate and regulate the use of such funds within their existing legal structures.

Staff thought that it would be useful to develop a new regulation answering questions that had arisen regarding specific interactions of federal and state law. The regulation would not involve a systematic restatement of party contribution limits and reporting obligations, but would address a limited number of circumstances where there is now some uncertainty regarding the proper application of existing state law. A summary of the *Boling* advice letter, followed by a description of how state and federal law interact in the use of Levin funds, will provide the Commission with essential background for staff’s proposed regulation.

### A. The *Boling* Advice Letter, No. A-04-212

---

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations.

In September 2004 April Boling sought advice from Commission staff in her capacity as treasurer of the San Diego County Republican Central Committee (“the SDCRCC”), a single entity controlling three bank accounts. One account was used to support or oppose federal candidates, and was registered as a federal recipient committee. A California general purpose committee managed the remaining two bank accounts; one to support or oppose state candidates and committees, and the second to support or oppose other candidates or issues.

Shortly before writing, the SDCRCC printed an advertisement urging Republicans to vote in the upcoming election, and providing them with a list of candidates and measures supported by the committee; the advertisement contained recommendations relating to federal as well as non-federal candidates. Federal law required that payment for this particular advertisement be made initially from federal funds, but permitted the federal account to be reimbursed from a state account to reflect the portion of the advertisement devoted to non-federal candidates and issues. However, federal law permitted a maximum reimbursement of 64 percent of the total cost, while the SDCRCC found that the true benefit to state candidates and issues amounted to 80 percent of the total cost. Because federal law prevented the state committee from paying the federal committee the full value (to the state committee) of the advertisement, the federal committee had effectively subsidized portions of the advertisement featuring state candidates and issues.

The *Boling* letter (Attachment One) reconciled the federal reimbursement provision with the Act’s general requirement that all state committee income and disbursements be reported, by advising that SDCRCC treat the federal committee’s “subsidy” as a contribution from the federal to the state committee, in the amount of 16 percent of the cost of the advertisement. As required in such cases, the contribution would be allocated to contributors to the federal committee, the individual contributions being reported with the committee itself identified as an intermediary.

The problem highlighted in this letter is a recurrent one. To protect a federal interest in limiting the influx of non-federal funds into federal election activities, federal law governing mixed federal and state spending sometimes establishes a presumption that expenditures attributable to federal activities will *not* be less than a certain percentage of the whole. When reasonable accounting methods indicate that the federal presumption overstates the federal component in particular cases, state committee accounts can only be balanced by quantifying the difference between presumption and reality, and providing some means for state committees to report that difference. The *Boling* letter made it possible for the SDCRCC to satisfy its state reporting obligation in that particular case.

## **B. Levin Funds**

One of Congress' principal goals in passing BCRA was to limit the role of "soft money" in federal elections.<sup>2</sup> A legislative compromise, the "Levin Amendment," attempted to reaffirm the traditional role of "soft money" by permitting contributions up to \$10,000 per person per year to every federal political party committee, subject to strict limits on the usage of "Levin funds," as described at 11 CFR part 300 and summarized below.

State and local political party committees that have receipts or make disbursements for "federal election activities" (as defined in the FECA) may create up to four types of accounts: (1) a *federal account* for deposit of funds raised in compliance with FECA; (2) a *non-federal account* for deposit of funds governed entirely by state law; (3) an *allocation account* from which payments are made that may be allocated to both state and federal uses; and (4) a *Levin account*, for deposit of funds that comply with some of the limits and prohibitions of FECA, and which are also governed by state law. A committee may have several non-federal accounts.<sup>3</sup>

Levin funds may only be spent by the committee that raises them, and only on certain activities. The general rule is that state and local party committees must use federal funds to make expenditures and disbursements for any federal election activity. However, they may use Levin funds to pay for voter registration activity during the 120 days prior to a regularly scheduled federal election, along with generic campaign activity, voter identification, and get-out-the-vote drives run in connection with an election in which a federal candidate appears on the ballot. These are uses to which "soft money" was traditionally directed in the federal system.

Expenditures on federal election activities totaling more than \$5,000 per annum must be paid entirely from a committee's federal account, or allocated between its federal and Levin accounts under formulas based on the candidates appearing on the federal ballot, which dictate a minimum federal allocation that serves as a "floor" that prevents under-estimation of federal expenditures. The rules are as follows:

---

<sup>2</sup> "Soft money" refers to funds that could be donated to political parties without limit, ostensibly for use in traditional get-out-the-vote and other generic party-building activities, which nonetheless came to be used in the last decade overtly to fund federal election campaigns. Contributions intended for use in election campaigns ("hard money") were subject to strict limits whose utility was compromised by the surge in "soft money" campaigns.

<sup>3</sup> A committee with separate federal and non-federal accounts may pay mixed federal/state expenditures in three ways. It can make the payment straight out of the federal account, with or without subsequent reimbursement by the non-federal account of the portion allocable to the state or local activity. It can set up an "allocation account" under 11 CFR section 106.5(g)(2), to receive deposits from the federal and non-federal accounts in the amount allocated to each as its share of the total expenditure, which is then paid out of this account. Or it can pay for certain kinds of expenditures out of a "Levin" account.

- (1) If a presidential candidate, but no senate candidate appears on the ballot, then at least 28 percent of any mixed federal-state expenditure must be allocated to the federal account;
- (2) If both a presidential and a senatorial candidate appear on the ballot, then at least 36 percent of the expenditure must be allocated to the federal account;
- (3) If a senate candidate, but no presidential candidate appears on the ballot, then at least 21 percent of the expenses must be allocated to the federal account;
- (4) If neither a presidential nor a senatorial candidate appears on the ballot, the minimum federal allocation is 15 percent.

Levin funds may *not* be used to pay for any part of a federal election activity that refers to a clearly identified federal candidate, or for any television or radio communication, unless the communication refers solely to a clearly-identified state or local candidate. Levin funds also may not be used to pay any person who devotes more than 25% of compensated time in connection with a federal election. It is worth emphasizing that Levin funds can pay for communications, including television and radio broadcasts, which refer to clearly identified *state* candidates.

Each state and local party committee has a separate Levin fund contribution limit of \$10,000 per person per annum. Levin funds must be raised and spent by the committee that maintains the particular account. Transfers and joint fundraisers are prohibited. Generally, fundraising costs may not be allocated, and no non-federal funds may be used to pay direct fundraising costs; non-federal and Levin funds must be raised using non-federal or Levin funds.

It appears that at least some committees believe that Levin funds raised by a state or local political party committee do not count against the \$27,900 annual contribution limit established by section 85303(b). This claim seems to be founded on a federal regulation governing receipt of Levin funds, 11 CFR 300.31(d)(2), which provides:

*“Effect of different State limitations. If the laws of the State in which a State, district, or local committee of a political party is organized limit donations to that committee to less than the amount [\$10,000] specified in paragraph (d)(1) of this section, then the State law amount limitations shall control. If the laws of the State in which a State, district, or local committee of a political party is organized permit donations to that committee in amounts greater than the amount specified in paragraph (d)(1) of this section, then the amount limitations in paragraph (d)(1) shall control.”*

The parties apparently agree that California could limit contributions to party committees to \$5,000, and that the limit on Levin fund contributions would thereby shrink to a maximum of \$5,000. The parties may argue that this is the *only* fashion in

which state law limits donations to Levin accounts. But staff believes that section 85303(b) *also* limits contributions to a Levin account. Specifically, if a person has donated to a party committee the maximum (\$27, 900) sum permissible under section 85303(b), a later contribution to the party's Levin fund would exceed that limit if it were made or accepted "for the purpose of making contributions for the support or defeat of candidates for elective state office."<sup>4</sup> To argue otherwise, the parties would have to maintain that passage of the Levin amendment actually increased California's limit on contributions supporting candidates for state elective office – from \$27,900 to \$37,900. There is no basis for such an interpretation of a federal law whose express position is that the collection of Levin funds is subject to the limits imposed by state law.

Finally, a political party committee files monthly reports of all receipts and disbursements of federal funds for federal election activities, including the federal portion of allocated funds. As noted above, federal law sets minimum percentages that must be reported to the FEC as spent on federal election activities. Committees may allocate and report higher percentages, and there is no penalty for over-allocation to the federal side of the ledger. The federal goal is to eliminate the influence on federal elections of money raised outside federal source and amount limitations. This goal is served equally well by accurate allocation and by over-allocation, which indeed is sometimes *required* by minimum allocation formulas, as the *Boling* advice letter illustrates.

### **C. Staff's Proposed Regulation 18530.3**

Staff's proposed regulation (Attachment Two) would clarify and codify rules integrating state and federal law governing political party committees when they engage in mixed state and federal campaign activities. The regulation addresses specific problems identified in the *Boling* Advice Letter, and in the use of Levin funds by political party committees.

The proposed regulation opens by asserting the Act's jurisdiction over contributions and expenditures of political party committees which do not fall exclusively within the jurisdiction of federal law. This assertion of state regulatory authority should not be controversial, for the reasons stated above, but for the simple objection that Levin accounts are created under federal law. Yet that same federal law makes it clear that Levin funds must be raised and spent in compliance with federal *and* state law, which includes reporting obligations for state campaign activities, and contribution limits. Levin funds certainly do not fall *exclusively* within the jurisdiction of federal law.

---

<sup>4</sup> Subdivision (b) of the same federal regulation provides that: "Each donation of Levin funds solicited or accepted by a State, district, or local committee of a political party must be lawful under the laws of the state in which the committee is organized." Here too, the following question is raised: If a donor has already contributed the maximum allowed under section 85303(b), does subdivision (b) permit the donor to contribute to the same committee's Levin account "for the purpose of making contributions for the support or defeat of candidates for state elective office"?

### Option One

Subdivision (a) of the proposed regulation concludes with an express statement that the \$27,900 contribution limit of section 85303(b) applies to contributions to Levin accounts, as well as contributions to purely non-federal (state or local) accounts, which are used to make “contributions for the support or defeat candidates for elective state office.” This sentence is bracketed as Option 1 in anticipation of objections from the political party committees. If Levin funds are *not* subject to this contribution limit, then it will be possible for a political party committee to make contributions of \$37,900 “for the support or defeat of candidates for elective state office,” notwithstanding the plain language of section 85303(b), which sets the limit some \$10,000 lower. The argument against this claim was given above at pages 5-6. The argument in favor of Option One is simply that the Commission lacks authority to permit contributions in excess of the limit prescribed by section 85303(b).

### Option Two

Subdivision (b) relates to the treatment of expenditures of federal money on state or local campaign activities, which in effect become federal “subsidies” of state or local campaigns to the extent that they are not reimbursed by state or local accounts, as seen in the *Boling* advice letter. There appears to be no controversy on this general point, but difficulties arise in the mechanics of reporting expenditures of federal funds on state or local campaigns. The first sentence of subdivision (b), without the language bracketed as Option 2, would permit a committee to report such expenditures “to the extent that the non-federal account does not reimburse the federal account in an amount equal to the value received by the non-federal account.” In other words, the committee would report the sum total of federal money spent on non-federal activities. Option 2, if adopted, would require more, because it would provide that, instead of treating a federal “subsidy” as a contribution from a federal to a non-federal account, those funds are regarded as a transfer of individual contributions from the federal to the non-federal account.

Staff believes that this is the correct approach because a state political party committee is a general purpose recipient committee. When a recipient committee reports its expenditures, it allocates them among the persons who had originally contributed the money, enabling the public and the Commission to identify the source of the funds and to monitor the compliance of these contributors with the contribution limit of section 85303(b). For example, if a committee wishes to spend \$120,000 on an advertisement for a critical state senate race and has four contributors who put up \$27,900 for that purpose, it has only \$111,600. If the committee itself contributes the remaining \$8,400 from a federal account, it would allocate that sum among contributors to that account, exactly as staff explained in the *Boling* advice letter. If the committee is *not* required to allocate this money among contributors to that federal account, it would facilitate circumvention of the contribution limits by permitting a person to contribute \$27,900 to

the state account, and still more to a federal account – from which transfers would be untraceable.

For this reason, Option 2 treats un-reimbursed subsidies from federal to state accounts as transfers of individual contributions, to be reported as such. Removal of the bracketed language converts the rule to the one desired by the party committees, where the transfers are reported simply as contributions from the committee itself. With such a rule, the public can learn how much was spent, but may never learn where it came from.

Ultimately, the parties advance a single argument in favor of their proposal to exempt federal party accounts from the requirement that contributions to *state* campaigns be allocated among their donors and reported accordingly. The argument is simply that a federal account is a federal committee, required only to report to the FEC. Yet any federal committee that makes contributions totaling \$1,000 or more to a state election campaign becomes a *state* committee as well, under the provisions of Section 82013 and regulation 18215(b) – with the full panoply of filing and reporting obligations that govern state committees. The rule embodied in Option 2, that federal committees report *to the state* the sources of all spending on state campaigns, is already required under the Act.

Nonetheless, if Option 2 is not implemented, Option 2a should also be removed. This Option consists of a subdivision concerning the allocation of contributions among contributors to federal accounts, codifying the allocation formula employed in the *Boling* advice letter. This method requires a “lookback” that can extend to nearly two years, to establish a pool of contributors to whom a proportionate share of the contributions at issue will be attributed. This means of allocating contributions has proven convenient in the past for multi-purpose organizations like political party committees, and was selected for that reason. Other methods are possible, such as a “Last In, First Out” – “First in, First Out” (“LIFO/FIFO”) system. Staff believes, however, that there should be some limit on how far a committee might look back in time for contributors to whom it would attribute present-day contributions, to maximize the likelihood that these contributions would be attributed to persons who were still part of an active donor pool.

### **Option Three**

Finally, Option 3 marks another proposal that is more controversial than by rights it should be – a requirement that longstanding *state* allocation procedures be used on *state* reports to establish the federal share of a mixed federal/state expenditure, when use of federal allocation formulas would inaccurately state the value of federal spending on state campaigns. The objections offered so far appear to staff as contrived and insufficient. The parties have argued, first, that it is unduly burdensome to require treasurers to keep “double books” from which to generate their federal and state reports. What would actually be required, however, is no more than continuing to measure the value of expenditures in state campaigns accurately, as treasurers have been accustomed to do. At worst, a requirement to calculate and report expenditures differently under the two legal regimes is no more burdensome than reporting tax deductions differently on

state and federal tax forms. Rules set by Congress for determining federal taxable income do not compel the state to abandon its *own* rules for calculating taxable income in California. And, of course, the rule proposed here would require departure from the minimum allocation formulas introduced in the new federal approach only when the federal formulas yield an inaccurate result, as illustrated in the *Boling* advice letter.

An ostensibly “mathematical” argument, that “the numbers don’t add up” when federal and state rules yield different results, is easily refuted. No mathematical law is violated when an accountant prepares federal and state tax returns under laws appropriate to each. In the present case, the federal reports, using federal formulas, account for 100 percent of all financial activity, as would state reports prepared under state rules.

The only real difference in the rule provided at Option 3 is that, when federal rules inaccurately reflect the value of a “subsidy” to a state campaign, the California rule is more accurate. Indeed, the proposed rule is expressly applicable *only* when a treasurer, in the exercise of due diligence, finds as Ms. Boling did that the federal rule inaccurately reports the value of a federal subsidy to a state or local campaign advertisement.<sup>5</sup>

#### **D. An Alternative Regulation Proposed by Charles Bell**

By letter dated June 13, 2006, Charles Bell of Bell, McAndrews & Hiltachk transmitted a draft of a proposed alternative to the regulation proposed by staff and discussed above. As may be seen in Attachment Three, this proposal addressed five issues that the California Republican Party believe warrant guidance in the area of mixed state/federal campaign expenditures. This draft was written in some haste, to ensure that it was received in time for the Interested Persons’ Meeting on June 20, which Mr. Bell was unable to attend. Although he has stressed that this alternative regulation was prepared for discussion purposes, with language not refined to the degree he would have preferred, the text certainly does present the substance of Mr. Bell’s vision of an appropriate regulation in this area, with a useful summary in the transmittal letter.<sup>6</sup>

#### **Recommendation**

Staff recommends that the Commission adopt a regulation similar in substance to the draft presented in Attachment Two, with all bracketed language. If the Commission chooses to omit the bracketed Options, it may favor a regulation along lines proposed by

---

<sup>5</sup> If Option 3 is not implemented, Option 3a should be rejected as well. Option 3a merely adds a subdivision (d) to relax the rule presented in Option 3, in cases where precision is less important. Staff anticipates that political party committees could often invoke this subdivision to apportion true “soft money” expenditures by straightforward application of the federal formula, simplifying the calculation. Any loss of precision may be acceptable in a rule that affects only the reporting of true “party-building” expenditures, a class of activity where it is in any case somewhat arbitrary to posit separate, quantifiable effects on federal and state arms of the same political party.

<sup>6</sup> Staff regards Mr. Bell’s proposal as fully competent to speak for itself, and in any event expects that Mr. Bell or a representative of his office will be on hand at the meeting to explain the nuances of his alternative regulation, or to answer any questions on it that the Commission may have.

Mr. Bell. If that is the case, or if the Commission wishes to adapt any of his provisions, staff recommends that the Commission direct it to confer with Mr. Bell, and to present an agreed version for Commission review at an upcoming meeting.

## **2. Regulation 18534**

Regulation 18534 also concerns application and enforcement of the contribution limits of section 85303, but is broader in scope because it governs not only the limits imposed on political party committees in subdivision (b), but also those governing all other recipient committees that make contributions to state candidates, in subdivision (a). The limits set by both subdivisions of section 85303 apply only to certain contributions, which would be used in campaigns for elective state office. Contributions to committees used for or against candidates for *other* elective offices, and contributions to committees made for any other purpose, are *not* limited by section 85303.

As described in the December memorandum, because the contributions a committee may receive may be limited in some cases and not limited in others, it is necessary to segregate funds that are subject to limits from those that are not, to prevent commingling that would obscure the origin of all committee funds. The proposal to require at least one bank account specifically identified as the repository of contributions subject to the limits of section 85303 was accepted by all at the December meeting, but there was much useful discussion on the most practical means of accomplishing the goal.

Draft regulation 18534 (Attachment Four) is staff's attempt to implement the Commission's directions in light of the public discussion last December. "Options" are not marked off as such in this draft, because it seems more convenient to proceed through the regulation in order, pointing out in this memorandum any substantive departures from the original draft that were requested by the Commission.

### **Subdivision (a)**

The important change here is the abandonment of the naming convention used in the earlier memorandum ("candidate support" vs. "non-candidate support" accounts), which were defined in subdivision (a). The public found this nomenclature confusing for a number of reasons, and the Commission requested that staff require a "general" account for deposit of limited funds, which could be used as the sole, "default" account by any committee that did not anticipate contributions in excess of contribution limits. Upon review, staff found that the term "general" itself caused confusion, because it was not obvious to everyone that the adjective referred to the permissible *uses* of the money, and even then, whether the term meant that the money could be used for everything *but* the narrow purposes subject to contribution limits, or for absolutely every purpose. For such reasons staff chose the names "all purpose," and "restricted use" to eliminate a kind of ambiguity that appeared to eliminate most alternatives.

### **Subdivision (b)**

This subdivision contains the first reference to the “restricted use” account, mentioned above. It should be noted that no committee is *required* by either subdivision to have either of these accounts, unless (1) it will receive contributions for purposes subject to limits under section 85303(a) or (b), when it must have an “all purpose” account and, (2) if it receives contributions in excess of the applicable contribution limit, it must have a “restricted use” account into which amounts in excess of the contribution limit can be deposited.<sup>7</sup>

This subdivision also permits an over-limit contribution to be “split” at time of deposit between two accounts, following a suggestion made at the December meeting, but retains the 14-day transfer provision challenged as too short at the same meeting. It does not appear that a longer period should be allowed. A committee that wants to transfer the allowable fraction of an over-limit contribution into an “all purpose” account can “split” the deposit on the first trip to the bank. On the other hand, there is reason to fear that a 30-day period to make the transfer decision may cause confusion in some committees with the (unchallenged) 14-day return period for over-limit earmarked checks provided in regulation 18531 and subdivision (c), leading to inadvertent violations of these rules.

#### **Subdivisions (c), (d), (e) and (f).**

These provisions are substantively unchanged from the December draft, where they passed without recommended change. The language of subdivision (d) has been expanded to correct a failure in the original draft to track the necessarily different language as between section 85303(a) and (b). Current subdivision (c) retains the rule of former subdivision (d), which requires a committee to deposit contributions in accordance with the stated purpose of the donor. The remaining subdivisions reflect the rules given in former subdivisions (d), (e), (f), and (g).

Two further points merit some comment here.

To prevent the “laundering” of limited contributions by transfer through and commingling in one or more committee accounts where the identity and purpose of the original donor would be lost, subdivision (d) provides that a committee may not transfer any funds to an “all purpose” account which do not originate from another “all purpose” account. This means that a committee which has only an “all purpose” account will require a “restricted use” account if another committee wishes to contribute money to it from a “restricted use” account. The Commission supported the prohibition of transfers from “non-candidate support” to “candidate-support” committees last December, as necessary to prevent laundering originally-limited contributions.

Because the funds that may be deposited into an “all purpose” account are

---

<sup>7</sup> Conversely, this draft regulation does not limit the number of “all purpose” or “restricted use” accounts that a committee may open, a concern expressed at the December meeting. Of course, multiple “all purpose” committees do not entitle a committee to multiply the contribution limits accordingly.

limited, committees should rarely wish to transfer unlimited funds out of the “all purpose” system. But when and if these cases arise, the practical cost of accepting such contributions will be that the intended recipient must open an “restricted use” account.

The parties opposed this same prohibition, which was contained in subdivision (g) last December, on two further grounds. First, granting a likelihood of “problems” with laundering, they claimed that the statute nonetheless did not authorize such a provision.

The answer to this is that the statute *implicitly* authorizes a necessary defense against obvious circumvention. If committee A could contribute over-limit funds to B’s “restricted use” account, and B could then contribute it back to A’s “all purpose” account, to its own “all purpose” account, or to a third committee’s “all purpose” account, an over-limit contribution could be laundered at little cost in time or effort.

Another ground for opposition was that the kind of “20<sup>th</sup> Century Insurance” maneuver described above is already against the law. If so, the law was manifestly ineffective. In any case, the existence of one law is no argument against passage of another that either replaces the first one, or facilitates its enforcement. The Supreme Court rejected the same contention when it rebuffed a challenge to federal contribution limits based on the observation that existing bribery laws made contribution limits unnecessary. (*Buckley v. Valeo*) 24 U.S. 1, 27 (1976)

### **Recommendation**

Staff recommends that the Commission set proposed regulation 18534 for adoption, with any improvements in language that may be identified at the hearing.

Attachments:

*Boling* Advice Letter, No. A-04-212

Draft regulation 18530.3

Letter of Charles H. Bell dated June 13, 2006

Draft regulation 18534